

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

BMO HARRIS BANK N.A.,

Plaintiff,

v.

THE GEHR GROUP, INC.,

Defendant.

Civil Docket No. \_\_\_\_\_

**COMPLAINT**

NOW COMES Plaintiff BMO Harris Bank N.A., in its capacity as Lender under the Credit Agreement (defined below) (hereafter "*Plaintiff*" or "*BMO*"), by counsel, against The Gehr Group, Inc. ("*Gehr*" or "*Defendant*"), a California corporation, and respectfully states the following as its Complaint in this matter:

**PARTIES**

1. Plaintiff BMO is a national banking association with its principal place of business at 111 West Monroe Street, Chicago, Illinois 60603.

2. Defendant Gehr is a California corporation with its principal place of business being located at 7400 East Slauson Avenue, Commerce, California 90040.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) as the parties are citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

4. This Court has personal jurisdiction over the Defendant as it is doing business in the state of New York and because it has submitted to the jurisdiction of this Court pursuant to the Guaranty (as hereinafter defined).

5. Venue is proper in this Court as the Defendant has submitted to the jurisdiction of this Court in the Guaranty and therein contractually waived all objections to judicial process in this Court.

#### **JURISDICTION**

6. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §1332, as BMO is a citizen of Illinois, Defendant Gehr is citizen of California, and the amount in controversy exceeds the sum of \$75,000.00.

#### **BREACH OF GUARANTY**

7. On or about June 29, 2017, BMO made a loan to Charlotte Hospitality, LLC, a Delaware limited liability company (“*Charlotte*” or “*Borrower*”) in the original principal amount of \$10,950,000.00 pursuant to the terms and conditions set forth in that certain Loan Agreement, as amended by the Waiver and First Amendment to Loan Agreement dated as of July 12, 2018 and the Waiver and Second Amendment to Loan Agreement dated September 25, 2019 (as the same may be further modified or amended, “*Loan Agreement*”). A true and accurate copy of the Loan Agreement is attached hereto as Exhibit A.

8. On or about June 29, 2017, in consideration of the Loan Agreement, Gehr executed a Guaranty in favor of BMO guaranteeing payment of amounts due BMO by Charlotte under the Loan Agreement.

9. Thereafter, on September 25, 2019, Gehr executed an Amended and Restated Guaranty in favor of BMO guaranteeing payment of amounts due BMO by Charlotte under the Loan Agreement (the “*Guaranty*”). A true and accurate copy of the Guaranty is attached hereto as Exhibit B.

10. Charlotte has defaulted under under Section 10.1(a) of the Loan Agreement by virtue of, among other things, (1) its failure to make the monthly payment of accrued interest when due

as required under the Loan Agreement (the “*Interest Default*”); and (2) its failure to make a mandatory prepayment of the outstanding principal balance of the loan in an amount equal to Five Hundred Thousand and No/100 Dollars (\$500,000.00) within ten (10) Business Days after BMO’s written request therefor as required by Section 2.4(d) of the Loan Agreement (the “*Remargin Default*”).

11. As a result of Charlotte’s default, on September 29, 2020, BMO made written demand on Charlotte and Gehr for payment of all amounts due and owing under the Loan Agreement (the “*Demand Letter*”). A true and correct copy of the Demand Letter is attached hereto as Exhibit C.

12. Pursuant to the Guaranty, Gehr is liable to BMO for certain amounts now due and owing to BMO by Charlotte under the Loan Agreement, together with the costs incurred in the collection of the amounts owed under Loan Agreement, including BMO’s court costs and attorneys’ fees. *See* Guaranty, Exhibit B, p. 10.

13. BMO has performed all of its duties and obligations under the Loan Agreement and Guaranty.

14. As of October 9, 2020, Charlotte is indebted to BMO in the principal amount of \$9,615,786.97, plus accrued interest, including default interest, of \$112,107.06, and late charges of \$30,605.35 in addition to attorneys’ fees and costs.

15. Pursuant to the applicable Guaranty Percentage set forth in the Guaranty, as of October 9, 2020, Gehr is liable to BMO in the amount of \$2,403,946.74 in principal, plus accrued interest, including default interest, of \$112,107.06, and late charges of \$30,605.35 in addition to all applicable enforcement costs, including attorneys’ fees.

WHEREFORE, Plaintiff, BMO Harris Bank N.A., respectfully requests that judgment be entered in its favor and against Defendant The Gehr Group, Inc. in the amount of \$2,546,659.15, plus accrued and further accruing interest, attorneys' fees and enforcement costs, and any other relief that this Court deems just and proper.

Respectfully submitted,  
BMO HARRIS BANK N.A.

By /s/ Joseph P. Lombardo  
One of Its Attorneys

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